M/023/042

U.S. DEPARTMENT OF THE INTERIOR
BUREAU OF LAND MANAGEMENT

FAX TRANSMITTAL:

Bureau of Land Management
35 E. 500 N.
Fillmore, UT 84631

Date: 7/14/98

TO: Tom Munson

COMPANY: You Dog 'em

LOCATION: SLC UT

FAX NUMBER: 359-3940

FROM: Sheri Wysong

COMPANY: BLM

LOCATION: Fillmore

FAX NUMBER: (435) 743-3135 TELEPHONE NUMBER: (435) 743-3100

TOTAL NUMBER OF PAGES 7
(INCLUDING COVER SHEET)
MESSAGE:

United States Department of the Interior

BUREAU OF LAND MANAGEMENT
HOUSE RANGE/WARM SPRINGS RESOURCE AREA
35 East 500 North
Fillmore, UT 84631

IN REPLY REFER TO:
3800
(U-054)
UTU-072860

CERTIFIED MAIL # P
RETURN RECEIPT REQUESTED

July 14, 1998

NEAL JENSEN
MANAGING PARTNER
B.E.G. RESOURCES L.L.C.
PO BOX 361
NEPHI UT 84648

Dear Mr. Jensen:

As was discussed with you during the meeting (Staff Report enclosed) between you, Tom Munson of UDOGM, and Sheri Wysong, Ron Teseneer and Larry Garahana of this office, we are writing to inform you of your right to appeal the establishment of a Record of Noncompliance (RON). You established the RON for failure to comply with the March 20, 1998 Notice of Noncompliance (NON), which required you to submit a Plan of Operations and a bond within 15 days of receipt of the NON. You received the NON on March 21, 1998, which made the deadline date April 6, 1998. You did not submit the bond until April 20, 1998, and did not submit a reasonably complete plan until May 5, 1998. You established the RON as of April 6, 1998.

In accordance with 43 CFR §3809.4, you have the right of appeal to the Utah State Director. Direct correspondence to:

Utah State Director
Bureau of Land Management
P.O. Box 45155
Salt Lake City 84145-0155.

If you exercise this right, your appeal must be accompanied by:

1. The name and address of the appellant,
2. The name and serial numbers of any involved mining claims, and
3. A statement of reasons for the appeal and any arguments you wish to present, which would justify reversal of modification to this decision.

Your appeal must be filed in writing at this office within thirty

(30) days after you receive this decision. This decision will remain in effect during the appeal unless a written request for a stay is granted.

Paragraph 4 of the NON stated the following:

> "Should you fail to comply with the requirements that have been detailed above within the required time frame, you will be considered to have established a Record of Noncompliance. If a record of noncompliance is established, section 3809.1-9 of the regulations requires that a plan of operations must be submitted within 30 days under for all existing and subsequent operations that would otherwise be conducted pursuant to a notice (3809.1-3). In addition, you will have 90 days to post with the Utah State Office a financial guarantee for all existing disturbances for which they are responsible. Failure to timely submit the financial guarantee (bond) will result in withdrawal of approval for all existing mining activity. Continuation of mining activity, without submission of the required financial guarantee may result in fines, or imprisonment or both. Actions to correct the items identified in the notice of noncompliance must be approved by the Resource Area or District Office prior to filing a financial guarantee. Financial guarantees held by the State will <u>not</u> be acceptable for operators or mining claimants that have established a record of noncompliance. The reclamation bond amount calculated for a noncompliance situation must also be certified at the operator's or mining claimant's expense by a third party professional engineer registered to practice within the State of Utah."

Due to a recent court case, the consequences of establishing a Record of Noncompliance have changed back to the following:

> For the duration of the record of noncompliance, all mining activity in excess of casual use on BLM-administered lands will require the submission of a plan of operations and a mandatory bond at 100 percent of BLM's estimated cost of reclamation, including appropriate adminstrative costs. This bond will be in addition to any bonds held by the State.

The duration of your RON began on May 5, 1998, which is the date we received a resonably complete Plan of Operations. The length of the duration has yet to be established by the Utah State Office of the BLM. I have recommended a duration of one year, which is the minimum.

Also discussed during the above mentioned meeting was the reclamation requirements of the haul road for your operation. You indicated that UP&L used parts of the road for access to their power lines. Further research into this issue brought to light the fact that the utility overlooked the need to obtain a Right-of-Way for the power line that runs right past your

operation. They intend to rectify this problem right away, and apply for said Right-of-Way (ROW). If they include parts of your haul road as part of the access to the ROW, you would not be responsible for reclamation of those parts. We suggest you consult with Lee Nelson at 47 S. Main, Richfield, UT (435)896-2238, to determine if UP&L would be interested in obtaining an ROW over all or part of your haul road.

An on-site inspection of your operation took place on July 10, 1998. During that inspection, two observations were noted. The first is that the one portion of your haul road has been incorrectly mapped. The 1967 Champlin Peak 7.5' map illustrates the road as it had existed since at least 1958, which is the earliest reference we can find for it. The map also did not designate a quarry at the site of your present operation, although several other existing quarries are denoted on the map. This indicates that the quarry had not been opened as of 1967. However, by the time a 1976 aerial photo was taken, the road had been rerouted, and the quarry can be plainly seen. A photocopy of the 1976 photo has been enclosed.

The other observation noted during the inspection was that part of another existing

Sincerely,

Rex Rowley
Area Manager

Enclosures

cc: Terry Steele, 296 N Center, Santaquin UT 84655
Robert Steele, 1055 N 400 E Nephi, UT 84648

SWysong:---

Staff Report

Title: Meeting with Neal Jensen

Date: July 8, 1998

Author: Sheri Wysong

On July 7, 1998, Ron Teseneer and Larry Garahana of the Fillmore office of the BLM, Tom Munson of UDOGM and I met with Neal Jensen of BEG Resources . The meeting was conducted to explain to Mr. Jensen why we felt the road passing through his area of operations should be reclaimed, to discuss the stipulations in the EA, and to discuss the why he had established a Record of Noncompliance, and what the consequences would be for establishing an RON.

The meeting began with the discussion of the road. We explained that even though the road was pre-existing, since he had redisturbed it he was liable for reclaiming. Mr. Jensen asserted the road was being maintained by the Juab County Road Department, and was an RS 2477 road. I stated that I had looked at the transportation maps the county had provided that designated what the county felt were county roads, and that this road was not on them. I asked Mr. Jensen who it was at the county had told him that this was an RS 2477 road. He said it was Bob Steele. I indicated that Mr. Steele did not represent the county, and that we would have to discuss this matter with a county official.

We then discussed the culvert that Mr. Jensen had stated he was going to install in his June 20, 1995 Notice of Intent. He said that he had decided against the culvert, and had instead graded a dip in the road to pass through the wash. We agreed that he would not need to install the culvert unless it became necessary in the future.

We then discussed placing cattleguards at the openings in the fence that keeps the livestock off of Highway 132. Mr. Jensen stated that in the past he had simply opened and shut the gates when cattle were on the allotment. I inquired why he had called me several years ago and asked how to go about putting in a cattleguard at the site. He said that he had been told that the BLM would install the cattleguard if he indicated it was needed. I said that was not true, the BLM would install cattleguards at its discretion, but that, especially in a situation like this, when heavy use of the road was due to his operation, he would be responsible to install them. He stated that he did not want to install them because it would require too much red tape. We then agreed that he would confer with UDOT to see if that agency had any safety concerns with his ingress and egress onto Highway 132, and that if its staff felt it was necessary to install the cattleguards so that the haul trucks could quickly enter and exit the highway Right-of-Way, he would do so. He said that he

already had two cattleguards he could use. He asked if, when the operation was finished, he could pull them and take them with him. I said that he could. In fact, Stipulation 20 of the Environmental Assessment states that he is required to remove the westernmost one.

We also discussed the need for him to consult with Questar Gas to determine if the gasline that runs along the highway is buried sufficiently deep to withstand the weight of the haul trucks as they pass over it.

We then referred to the Environmental Assessment, and discussed the stipulations. We had already partially discussed Stipulation 8, which referred to the cattleguard. One alternative to placing cattleguards is to fence the entire area of operations from the first gate at the highway, and encircle the quarry and end at the second gate. By doing so the gates could be left open, and when it came time to reclaim, the disturbed area would already have an exclosure around it to protect immature vegetation from livestock. We then discussed Stipulation 19, that stipulated that an exclosure had to be constructed at the time of reclamation. Mr. Jensen stated that he didn't think cattle would invade the site, as they did not ever come up to the quarry anyway, due to the lack of forage in the area. I pointed out that if decent forage began to grow on the site, it may well attract the animals. Tom Munson stated that UDOGM normally didn't require fencing of disturbed areas, but left it up to the operator to assume the risk that he would have to return and reseed if livestock killed the emerging vegetation. We also discussed how rigorous the standards of revegetation should be in light of the fact that most of the surrounding vegetation consisted of cheatgrass and sagebrush. Mr. Jensen was concerned about the cost of fencing. I pointed out to him that the specifications of the fence were relaxed as this was not to be a permanent one, and that he would still own the materials after it was removed. We decided to wait until Mr. Jensen had an opportunity to discuss with UDOT whether cattleguards would be necessary, before any decisions were made about when and where to fence.

Stipulation 14 was also discussed, as it pertained to the berm around the fuel storage tank. The present berm appears to be inadequate. When I find out what the actual standards are, we will inform Mr. Jensen as he agreed to make the modifications.

Stipulation 20 may have to be amended, if Juab County does want to assert RS 2477 rights. Another consideration is that part of the road is occasionally used by the power company to access its lines. There is currently no ROW, either for the lines themselves or for the road accessing them. Before reclaiming the road, the power company will be given an opportunity to apply for an ROW over part of it. However, this would only cover about 1/10 of a mile of the road that is in contention.

We also discussed the discrepancies in the acreages between the plan submitted by Mr. Jensen and those that Ron Teseneer calculated. One was the road acreage. Ron had estimated about 1.5 acres of road disturbance, whereas Doug Jones had calculated 2.71 acres. Ron had estimated about 6.5 acres of remaining disturbance, and Jones 7.63. Mr. Jensen said that he would have Jones get back to us, and explain the acreage figures. Tom and I explained to Jensen that the $14,000 on deposit was considered to be an interim bond until an actual calculation of the reclamation costs could be determined, and that the actual bond may need to be for a somewhat higher amount. We explained that the interim bond had been accepted in order to allow him to continue to operate until an actual bond was accepted. Tom also explained that bond amounts were adjusted when the recontouring of a site had been completed, even though the entire amount could not be released until satisfactory vegetation had established. Jensen indicated that the crusher and other equipment presently on site would be moved soon, and that part of the area could be recontoured. Doing so right away would result in an immediate decrease in the estimated reclamation costs.

It was then time to discuss the fact that Mr. Jensen had established a Record of Noncompliance. I told him that a letter would be sent to him shortly that would describe his appeal rights in the matter. We discussed how the establishment of the RON would affect another operation he is considering. At that point, I was called away to work with another customer, and Ron finished the discussion.

When all the above issues have been agreed upon, an amendment to the Plan should be submitted, and a Tier to the EA prepared. We will avail ourselves to Mr. Jensen and assist him in preparing a satisfactory amendment if he desires our help.

Throughout this and other meetings, Mr. Jensen referred to advice he had received from other individuals. While some of that advice may have helpful to him, some of it was misleading, especially that which pertained to the policies and regulations of the BLM. While it is the policy of the courts that an individual doing business with the Federal Government is responsible for knowing and understanding the laws that apply to said business, BLM personnel do make reasonable attempts to inform operators when they have run afoul of the regulations, and allow them sufficient time to correct violations before invoking penalties. It is unfortunate that an individual who is basically a "good operator" established a Record of Noncompliance due to a misunderstanding of the fact that the BLM is unequivocally committed to enforcing the regulations set forth by 43 CFR 3809.